its electric system as its "single" or "principal" system, and the Commission proceeded to hold further hearings, commencing May 18, 1960, on the question whether NEES's gas utility subsidiaries—which both NEES and the Commission's staff agreed to consider as constituting an "integrated gas utility system" within the meaning of Section 2(a)(29)(B), 15 U.S.C. 79b(a)(29)(B) (R. 23–24, 46–47, 49, 772; see *infra*, p. 22)—could be retained by NEES as an "additional integrated public-utility system" under Section 11 (b)(1).[2]

At the commencement of the gas integration proceedings, NEES controlled, *inter alia,* fourteen electric utility companies, eight gas utility companies and a service company. The retail electric companies served 824,000 customers in a franchise area of 4,600 square miles within the States of New Hampshire, Massachusetts, Rhode Island and Connecticut (R. 1256–1257).[3] The gross investment in electric plant and equipment, as of December 31, 1958, was approximately $600,000,000, and gross revenues from sales of electricity in 1958 were approximately $143,000,000 (R. 1256–1257).

NEES's gas subsidiaries provided retail service to 237,000 customers in a franchise area of 660 square

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[2] NEES has not contested the Commission's longstanding interpretation that an "integrated public-utility system" cannot include both gas and electric utility properties. See *Columbia Gas & Electric Corp.*, 8 S.E.C. 443, 461–463; *The United Gas Improvement Co.*, 9 S.E.C. 52, 77–83; *Philadelphia Co.*, 28 S.E.C. 35, 44.

[3] The figures used herein are for the year ended December 31, 1958, which was the latest year for which audited financial statements were available at the time of the hearings (R. 1257).

miles entirely within Massachusetts. Seventy-five percent of this area was also a part of the franchise area of NEES's electric subsidiaries, and about 78 percent of the gas customers were also served by NEES's electric subsidiaries. As of December 31, 1958, NEES's investment in gross gas plant and equipment was approximately $56,300,000, and gross revenues in 1958 from the sale of gas were $22,700,000 (R. 1257–1258). Except for manufactured gas used only during peak periods and for emergency standby purposes, NEES sells natural gas obtained by pipeline from the southern United States. Of the twelve Massachusetts nonaffiliated gas companies which respondents selected during the proceedings for comparison with NEES, only one exceeded the NEES gas utility system in size of gross plant, gross annual revenues or number of customers (R. 1272, n. 24, 1365).

NEES acquired most of its gas subsidiaries between 1926 and 1931. In 1952, "as a step in effectuating compliance by NEES with the integration provisions of Section 11(b)(1) of the Act," NEES proposed to sell its Massachusetts gas properties as a unit[4] and obtained three bids therefor (R. 70, 58, 1258, 1264, n. 13). Although a contract was entered into with the highest bidder, it was not consummated because the purchaser failed to obtain the anticipated financing (R. 48, 70, 1258). In the same year, NEES established a Gas Division to supervise its eight gas companies, all of which are within 48 miles of the

[4] *New England Electric System*, Holding Company Act Release No. 11016 (1952).

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Division headquarters except one company, which is 80 miles away (R. 1257–1258). The head of the Gas Division is also the president of each gas company and is ultimately responsible to NEES's vice-president in charge of management (R. 1305). Notwithstanding the creation of this Division, certain aspects of the electric and gas businesses continue to be handled on a joint basis (R. 1258).

After a full hearing, the Commission determined that the divestment of NEES's gas utility companies would not result in a "loss of substantial economies" to those companies within the meaning of Section 11(b)(1)(A) (R. 1255–1280) and ordered that they be divested (R. 1280–1281). The Commission found that NEES's estimate of the loss of economies flowing from divestiture was exaggerated,[5] and that,

[5] After the Commission reduced NEES's original estimate by $67,000 to take account of certain revised payments (R. 1264–1265)—the correctness of which deduction NEES does not dispute (see R. 1456, n. 1)—NEES urged that the amount of lost economies would be $1,098,000 a year. This figure was based upon a Gas Severance Study prepared by Ebasco Services, Inc. The Commission found that the estimated increase in annual operating costs of the combined gas companies after severance was inadequately supported in that there were unexplained inconsistencies, particularly with respect to the figure for customer accounting, which represented approximately 40 percent of the estimated total increased expenses and which may have been substantially overstated (R. 1265–1266). The Commission also found that a "supplemented Ebasco study, which assumed that the gas system would be operated on a combined basis, estimated the same increase in customer accounting costs as appeared in the original Ebasco study, which was based on the assumption that the companies would be operated separately," and it found that NEES and Ebasco failed adequately to explain "why combined operations would not re-

even if it were to accept NEES's figure, NEES had failed to show a "loss of substantial economies" within the meaning of Clause (A). In so holding, the Commission interpreted the relevant provision, as it has done in prior divestment cases dating back more than twenty years, to require a showing that each "additional system cannot be operated under separate ownership without the loss of economies so important as to cause a serious impairment of that system" (R. 1262–1263). Under this test, the Commission ruled that, on the basis of the record before it, it was unable "to find that the gas companies could not be soundly and economically operated independently of NEES * * *" (R. 1279).

On NEES's petition for review (R. 1286–1294), the court of appeals reversed the Commission's order—not on the ground that the Commission's conclusions were unwarranted under the test which it had applied—but on the theory that the Commission had misinterpreted the statutory phrase "loss of substantial economies" (R. 1458–1466). The court held "that clause (A) called for a business judgment of what would be a significant loss * * *" (R. 1464) and, concluding that on the record there could have been a finding in NEES's favor under this standard (R. 1466), remanded the case to the Commission.

sult in lesser amounts for such costs" (R. 1265–1266). The Commission, in spot-testing the Ebasco study, examined Ebasco's estimates of treasury and accounting expenses in two communities where NEES's subsidiaries operated both gas and electric companies and found great disparities between the estimated increases in expenses attributed to the electric companies and those attributed to the gas companies (R. 1267–1268).

SUMMARY OF ARGUMENT

A. The primary aim of Section 11(b)(1) was to restrict a holding company's control over operating utility companies to one integrated public utility system. This theme constantly recurs in the congressional material—from the report of the National Power Policy Committee, which prepared the first draft of the holding company bill, to the Statement of the Managers on the Part of the House, appended to the report of the conference committee which ultimately produced the present version of the Act. The bill that the Senate first passed flatly prohibited central control of more than a single integrated system. This was modified by the House to provide for flexibility by giving the Commission almost complete discretion to determine which additional integrated systems, if any, a holding company could retain. In conference, the House's desire for flexibility was satisfied by specifying certain narrow conditions "under which," in the words of the House Managers, "exception should be made to the form of one integrated system." H. Rep. No. 1903, 74th Cong., 1st Sess., 71. The exception in Clause (A) would be called into play, the House Managers reported, only where "a real economic need on the part of the additional integrated systems" was shown. *Ibid.* This need cannot be demonstrated merely by showing what in ordinary business parlance would be a significant loss. Rather, as the Commission held, Congress required a showing of such a relationship between the principal and the additional systems that

the latter could not operate soundly and economically independent of the former.

The Commission's reading of Clause (A) is fully consonant with the Act as a whole. The court of appeals' interpretation, on the other hand, unduly emphasizes the reference to "economy of management" in Section 1(b) of the Act, at the cost of distorting the basic congressional purpose. The court also erred—in both its factual premise and its reasoning—in basing its rejection of the Commission's interpretation on the ground that the Commission erroneously gave different meanings to the words "substantial economies" when used in two different parts of the Act. The Commission did not in fact adjudicate the issue whether there were "substantial economies" as used in Section 2(a)(29)(B) (which defines "integrated gas system") but merely accepted its staff's concession that NEES's gas companies formed an integrated system as defined in that section, in order to expedite resolution of the critical question under Section 11. The court's treatment of this salutary issue-narrowing procedure—followed by most administrative agencies and encouraged by Congress—was wholly unjustified. In any event, there is no inconsistency in a reading of the Act which gives full effect to the congressional policy in favor of grouping geographically-related properties into a single system for operational purposes (reflected in Section 2(a)(29)(B)) as well as to the policy against holding-company retention of more than one integrated system other than in exceptional circumstances (reflected in Section 11(b)(1)(A)).

B. The court below erred in failing to accord any weight to the Commission's interpretation of Section 11(b)(1)(A). When Congress entrusts the application of a general standard, such as "the loss of substantial economies," to an administrative agency, this Court has made it clear that the agency's view as to the meaning of the statutory standard, unless manifestly unreasonable, is entitled to great deference. Respondents cannot justify the court of appeals' failure to give due regard to the administrative construction on the ground that in the present case the Commission applied a test different from that which it has consistently used in the past. Respondents concede that the Commission applied the same test in this case that it stated in the *Philadelphia Co.* case in 1948, and analysis of the Commission's other decisions shows that the test the Commission articulated here is basically the same as that it has consistently applied in the past. Nor can it seriously be contended that the Commission's interpretation in the present case is manifestly unreasonable. The legislative history and statutory framework as well as the fact that the Court of Appeals for the District of Columbia Circuit has twice construed the provision in the same manner as the Commission, give weighty support to the Commission's construction.

C. One practical difference of major importance between the Commission's interpretation and that of the First Circuit should be pointed out. A major evil of control over both gas and electric utility systems by a single holding company is the favoring by the controlling company of one otherwise competitive

form of energy over the other. It is clear that Congress intended that the Commission should deal with this problem under Section 11(b)(1), and the Commission in fact took the anticompetitive consequences of retention into account in the present case. The court's interpretation of Clause (A), however—requiring a finding of the beneficial effect of divestiture upon competition solely in terms of dollars or percentages—does not properly leave room for meaningful consideration of this crucial competitive factor, since competitive consequences are not capable of precise measurement in these terms. Abandonment of the Commission's test for that of the court below, therefore, would, as a practical matter, greatly impair the congressional goal of eliminating "restraint of free and independent competition" set forth in Section 1(b)(2) of the Act.

ARGUMENT

THE COMMISSION CORRECTLY RULED THAT SECTION 11(b)(1)(A) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PROHIBITS A HOLDING COMPANY FROM RETAINING MORE THAN ONE INTEGRATED PUBLIC UTILITY SYSTEM UNLESS THE COMPANY SHOWS THAT THE ADDITIONAL SYSTEM SOUGHT TO BE RETAINED IS INCAPABLE OF SOUND AND ECONOMICAL OPERATION INDEPENDENT OF THE PRINCIPAL SYSTEM

Congress made it abundantly clear in enacting Section 11—which this Court has recognized as the "very heart of the title"[6]—that the Commission was mac-

[6] See *North American Co.* v. *Securities and Exchange Commission*, 327 U.S. 686, 704, n. 14, where this language was quoted from S. Rep. No. 621, 74th Cong., 1st Sess., 11.

dated to take such action as it found necessary "to limit the operations [of holding companies] to a single integrated public utility system * * *" (Section 11(b)(1)). To this basic provision, an explicit and, as we shall show, a narrow exception was carved out. Thus, a holding company may continue to control one or more additional integrated public-utility system only if the Commission finds:

> (A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;
>
> (B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and
>
> (C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.[7]

Since Congress did not specify what it meant in Clause (A) by "substantial economies," the meaning of that phrase must be derived from the general design and policy of the legislation and its legislative history.

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[7] As the Commission noted (R. 1260–1261), the only issue here involved Clause (A), since the requirements under Clauses (B) and (C) were met.

A. THE HISTORY AND DESIGN OF SECTION 11(b)(1)(A) SUPPORT THE COMMISSION'S INTERPRETATION

1. The underlying premise of Section 11 was that an undue extension of the field of operations of a holding company system is not conducive to efficiency, or, in any event, does not result in efficiencies commensurate with the social and economic disadvantages involved. As the National Power Policy Committee reported:[8]

> Because * * * [the growth of holding company systems] has been actuated primarily by a desire for size and the power inherent in size, the controlling groups have in many instances done no more than pay lip service to to the principle of building up a system as an integrated and economic whole, which might bring actual benefits to its component parts from related operations and unified management. * * *

Accordingly, Congress determined that the scope of holding company operations had to be strictly limited.

As originally introduced by Representative Rayburn in the House and Senator Wheeler in the Senate, Section 11 of the holding company bill called for the

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[8] Report of the National Power Policy Committee, H. Doc. No. 137, 74th Cong., 1st Sess., 4, appended to S. Rep. No. 621, 74th Cong., 1st Sess. The National Power Policy Committee was an interdepartmental committee appointed by the President and composed of persons in the government most concerned with the power problem. The first draft of what is now the Holding Company Act was prepared by the Committee in collaboration with leaders in the House and Senate. See Hearings Before the Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess., 156.

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elimination of all holding company systems which were not "geographically and economically integrated." See S. 1725, Sec. 11(b), 74th Cong., 1st Sess. See also S. Rep. No. 621, 74th Cong., 1st Sess., 32; 79 Cong. Rec. 14781 (March 28, 1935) (remarks of Senator Wheeler). The bill first passed by the Senate contained no provision for the retention by a holding company of more than one integrated public utility system; indeed, it required the complete elimination of holding companies, save in the exceptional circumstance where the Federal Power Commission would certify that continuance of the holding company was necessary for the proper functioning of the integrated system.[9] The House modified the bill, however, and adopted a substitute which directed the Commission to order holding companies and their subsidiaries to limit their "operations * * * to a single integrated public utility system, except that if the Commission finds that it is not necessary in the public interest to so limit the operations of such holding-company system, the order of the Commission shall require such company to take only such action * * * as the Commission finds necessary to limit such operations to such number of integrated public utility systems as it finds may be included in such holding-company system consistently with the public interest." H. Rep. No. 1318, 74th Cong., 1st Sess., 17. The intent of the House was to allow some flexibility in

[9] S. 2796, 74th Cong., 1st Sess.; S. Rep. No. 621, 74th Cong., 1st Sess., 32; Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., 333–334.

the administration of Section 11, leaving substantial discretion in the Commission to develop the law on a case-by-case basis.

The House version was strongly criticized on the ground that it was too indefinite to be an effective guide to administration and so broad as to defeat the basic purpose of Section 11.[10] Senator Wheeler, Senate Manager of the bill, agreed with these criticisms, and suggested that the House bill involved an unconstitutional delegation of legislative power to the Commission (79 Cong. Rec. 10842 (July 9, 1935)).

The present provisions in the ABC clauses were inserted in conference. The narrow scope of the exception which these standards permit was explained in the Statement of the Managers on the Part of the House appended to the conference report on the substituted bill finally enacted (H. Rep. No. 1903, 74th Cong., 1st Sess., 70–71):

> * * * Section 11 of both [House and Senate] bills * * * authorizes the * * * Commission to require a *holding company to limit its control over operating utility companies to one integrated public-utility system.*
>
> *   *   *   *
>
> The conference substitute meets the House desire to provide for further flexibility by the statement of additional definite and concrete circumstances under which exception should be made to the form of one integrated system. * * *

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[10] Letter of Joseph P. Kennedy, then Chairman of the Commission, 79 Cong. Rec. 10838 (July 9, 1935); Additional views of Congressman Eicher, H. Rep. No. 1318 on S. 2796, 74th Cong., 1st Sess., 45.

> The substitute, therefore, makes provision to meet the situation *where a holding company can show a real economic need on the part of additional integrated systems for permitting the holding company to keep these additional systems under localized management with a principal integrated system.* [Emphasis added.]

Further light was shed on the purpose of the section, as envisaged by the conference committee, by the remarks of Senator Wheeler, a member of that committee, delivered a few minutes after the Senate adopted the conference substitute, but before the bill was enrolled [11] (79 Cong. Rec. 14479 (Aug. 24, 1935)):

> Since *both bills accepted the proposition that a holding company should normally be limited to one integrated system,* my colleagues and I conceived it to be our task to find what concrete exceptions, if any, could be made to this rule that would satisfy the demand of the House for some greater flexibility. After considerable discussion the Senate conferees concluded that *the furthest concession* they could make would be to permit the Commission to allow a holding company to control more than one integrated system if [among other tests] the additional systems were in the same region as the principal system *and were so small that they were incapable of independent economical operation* * * *. [Emphasis added.]

From this review of the legislative history, several points emerge, which, we submit, substantiate the Commission's interpretation of the Act. It is clear that, generally, a holding company was to be limited to a single integrated public utility system. This Court

[11] See 79 Cong. Rec. 14520 (Aug. 24, 1935).

expressly recognized this cardinal principle in *North American Co.* v. *Securities and Exchange Commission*, 327 U.S. 686, 696–697.[12] Whether an additional system was retainable because it came within the narrow exceptions was made to depend on that system's relationship to the principal system. Retention was permissible if it resulted in "the integration and coordination of related operating properties" (see Section 1(b)(4), 15 U.S.C. 79a(b)(4)) under a management single-mindedly devoted to the development of those related properties in "free and independent competition" (see Section 1(b)(2), 15 U.S.C. 79a(b)(2); see also, *infra*, pp. 34–38). But an additional integrated system which was able to stand alone—*i.e.*, capable of managing its own affairs—was to be given its independence.[13] See *Philadelphia Co.*, 28 S.E.C. 35, 46,

[12] "In essence, [Section 11(b)(1)] confines the operations of each holding company system to a single integrated public utility system with provision for the retention of additional systems only if they are relatively small, located close to the single system and unable to operate economically under separate management without the loss of substantial economies * * *."

[13] The mere fact that the eight NEES gas companies in 1958 had gross assets in gas plant of $56,300,000 and gross revenues that year from the sales of gas of $22,700,000 (R. 1257–1258) demonstrates that we are dealing with an enterprise of a size amply capable of independent operation. Indeed, their gas system is larger than all but one of the Massachusetts companies respondents chose for comparison. Accordingly, the Commission properly found that, even if independent operation of so large a gas system were to increase costs by the claimed $1,098,000, such loss of economies was not "substantial" in the light of the congressional intent. As the Commission found, "In the instant case, the amount of the estimated loss of economies would be equal to 4.83% of the gas system's operating revenues, 6.03% of operating revenue deductions (excluding federal income taxes) and 23.28% of gross income and 29.94 percent

affirmed *sub nom. Philadelphia Co.* v. *Securities and Exchange Commission,* 177 F. 2d 720 (C.A. D.C.). In short, "the loss of substantial economies" contemplated by Congress was such a loss as would render the additional system incapable of sound and economical operation independent of the principal system.

This legislative intent—clearly reflected in the Commission's interpretation—was wholly ignored, and consequently undermined, by the court below. Thus, for example, although it noted that the House Managers' Statement (*supra*, pp. 15–16) contained a "pertinent characterization" of the phase "substantial economies" (R. 1460), the court declined to accord the Statement any weight. This was plainly unwarranted. While the meaning of "real economic need" as used in the Statement may be subject to dispute, it is quite evident that the Statement contemplated a test much stricter than the court of appeals' standard of "a business judgment of what would be a significant loss" (R. 1464).[14] Moreover, nothing in

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of net income before federal income taxes" (R. 1270). These ratios—of which the percent of operating revenue deductions is perhaps the most significant—are comparable to those in other gas severance cases in which the Commission had required divestment (R. 1270, 1282).

[14] Also erroneous, in our view, was the court's rejection of Senator Wheeler's statement on the results of the Senate-House conference (*supra*, p. 16). On the ground that the statement was made after the Senate's vote on the conference committee's bill, the court held that it was "not to be given the weight to which it might have been entitled if made at another time" (R. 1460). But the report of a legislator so instrumental in the passage of the statute and so familiar with its provisions and purposes as was Senator Wheeler is entitled to greater respect. This Court has recognized the significance of an "ex-

the history reviewed above suggests that Congress intended the test of retainability to be "a business judgment of what would be a significant loss." Indeed, even the most lenient version of the statute—that first passed by the House—contemplated a more stringent test. See, *supra*, pp. 14–15.

2. The Commission's interpretation of Section 11 (b)(1)(A)—strongly supported, as we have shown, by the legislative history—is fully consonant with the design of the Act as a whole, and the court of appeals' suggestion to the contrary is without merit. In concluding that Section 11(b)(1)(A) "called for a business judgment of what would be a significant loss" (R. 1464), the court below relied on language in the Act's statement of purposes, "the tenor of which," it found, "was that holding companies had been found uneconomical to investors and to the public" (R. 1464). From this premise, the court reasoned, in effect that "economical" holding-company systems—which also meet the requirements of Clauses (B) and (C)—need not be restricted to a single integrated utility system. In so reasoning, the court unduly emphasized one of several congressional policies embodied in the Act, thereby distorting its meaning.

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plicit statement by the one most responsible" for enactment of a statute (*Leedom* v. *International Union*, 352 U.S. 145, 150), and the Court of Appeals for the District of Columbia Circuit expressly relied on Senator Wheeler's remarks as a relevant aid to the interpretation of Section 11. See *Philadelphia Co.* v. *Securities and Exchange Commission*, 177 F. 2d 720, 725; *Engineers Public Service Co.* v. *Securities and Exchange Commission*, 138 F. 2d 936, 941–942, certiorari granted, 322 U.S. 723, vacated with directions to dismiss the petition for review as moot, 332 U.S. 788.

It is true, of course, that lack of "economy in management and operation" was among the evils of holding-company operations which the Act was designed to eliminate. See Section 1(b)(4), (5). Indeed, several provisions of the Act are plainly designed, in large measure, to assure efficient and economical management. See Sections 7(d)(3); 10(c)(2); 12(d), (f) and (g); and 13. But there is no basis for exalting the goal of eliminating uneconomical management above such other enumerated objectives as "the integration and coordination of related operating properties" (Section 1(b)(4)) and elimination of "restraint of free and independent competition" (Section 1(b)(2); see *infra*, pp. 34–38). Much less is there any warrant to construe the reference to economy of management as precluding the application of Section 11(b)(1) whenever the retention of additional systems would produce operational economies. Such a reading would in large degree nullify the plain mandate of Section 11(b)(1), since—as Congress clearly contemplated [15]—in most instances some economies of management (which, presumably, businessmen would view as significant) are likely to result from retention. The Commission's interpretation includes consideration of the Act's policy of eliminating holding company control where such control is unrelated to

[15] See Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., pt. 2, pp. 1249, 1402–1403, 1530–1531, pt. 3, pp. 2257–2277; Hearings Before the Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess., 65. See also *Engineers Public Service Co.* 12 S.E.C. 41, 61, quoted *infra* at p. 30.

"economy of management," [16] but—unlike the First Circuit's construction—it also takes into account other important congressional objectives.

The court of appeals rejected the Commission's interpretation of Clause (A) on the further ground that the Commission had erred in reading the phrase "substantial economies" therein differently from its reading of the same words in Section 2(a)(29)(B). The latter section defines an integrated gas utility system as "one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system." The court reasoned that since the Commission had treated the gas properties as an integrated gas system, and since NEES alleged that operating such properties together as a single system would result in annual savings of $329,400, the Commission necessarily must have concluded that "saving $329,400 annually by integrating the eight gas companies is effectuating substantial economies under section (29)(B), but that $1,098,600 annually is not substantial economies under clause (A)" (R. 1463, n. 8).[17]

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[16] See the cases in which the Commission has permitted holding-company retention of "additional" systems under Section 11(b)(1)(A), *infra*, n. 21, p. 31.

[17] The figures were taken from the Ebasco Gas Severance Study introduced by NEES (*supra*, n. 5). No analysis of these figures is called for in the present posture of the case. We point out, however, that in stating the court's premise on the basis of those figures we concede neither that the Ebasco study is accurate nor—more pertinent here—that the estimated saving to the gas companies from operation as an integrated

The court's analysis is faulty because it rests upon (a) an erroneous factual premise and (b) erroneous reasoning.

a. Once NEES had designated its electric system as its principal system, the question was which, if any, of its gas properties it could retain as an additional system. NEES contended that all of its gas companies constituted a single integrated system and the Commission's Division of Corporate Regulation, in order to simplify the issues and to expedite determination of the crucial question under Section 11(b)(1), conceded (R. 772) that the gas companies were an integrated system. The Commission, without making any findings thereon, decided the case on that assumption (R. 1256). This concession, however, made primarily for the purpose of simplifying the decision on the Section 11 issue, cannot fairly be treated as an informed determination by the Commission that the alleged annual savings of $329,400 resulting from operating the NEES gas companies as a single system constituted "substantial economies" as that term is used in Section 2(a)(29)(B).

It is common practice, before both courts and agencies, for the litigants to stipulate as to a particular issue, in order to eliminate it as a contested point in the case, and for the tribunal to accept such stipulation as a basis for deciding the case. But in thus accepting the stipulation the tribunal

system is, under any interpretation of "substantial economies," comparable to the "loss of economies" which would result from divestment of the gas system under Section 11(b)(1).

cannot be said in any meaningful sense to have determined or adjudicated the issue thus stipulated. To treat the Commission's acceptance of the staff's concession that the NEES gas properties are an integrated system as a formal Commission determination that savings of $329,400 constitute "substantial economies" under Section 2(a)(29)(B), and then to tax the Commission with inconsistency because it held that additional expenses of approximately one million dollars did not represent the loss of substantial economies under Section 11(b)(1)(A), would be wholly unjustified. It would be at odds with recent salutary developments in administrative procedure designed to narrow, as far as possible, the issue in dispute.[18] For the effect of the court of appeals' ruling, if generally followed, would be to discourage agencies and their staffs from conceding any points in a case for purposes of simplifying the decision, and to cause them to insist that all issues be fully litigated.

b. Assuming, however, that the Commission has read the words "substantial economies" differently in the two sections, that does not vitiate the Commission's interpretation of clause (A). "It is not unusual for the same word to be used with different

[18] See, for example, Section 5(a) of the Administrative Procedure Act, relating to responsive pleadings and to "prompt notice of issues controverted in fact or law" and Section 7(b)(6) of the Act, relating to conferences "for the settlement or simplification of the issues by consent of the parties." See also, *e.g.*, S. 1336, § 5, 89th Cong., 1st Sess. (March 4, 1965), a pending bill to amend the Administrative Procedure Act and to provide for pre-hearing procedures to resolve facts and issues not in dispute.

meanings in the same act, and there is no rule of statutory construction which precludes the courts from giving to the word the meaning which the legislature intended it should have in each instance." *Atlantic Cleaners & Dyers* v. *United States,* 286 U.S. 427, 433. In the Holding Company Act the test of "substantial economies" serves different functions under Section 2(a)(29)(B) and 11(b)(1)(A), and the words therefore may properly be given different meanings under the two sections.

The determination whether a particular group of utility properties constitutes an integrated system under Section 2(a)(29) serves two purposes in the administration of Section 11(b)(1)(A). First, since the latter section basically limits a holding company to "a single integrated public-utility system," that system must be defined in order to ascertain what properties the holding company may retain without regard to the proviso concerning the retention of additional systems. Second, it is necessary to determine whether the additional properties which the holding company seeks to retain under the proviso themselves constitute an integrated system, since only those properties which make up "additional integrated public-utility systems" are capable of retention under Section 11(b)(1).

In deciding for these purposes whether a group of gas properties constitutes an integrated system, the statutory inquiry under Section 2(a)(29)(B) is whether the properties "are so located and related" that their operation as a "single coordinated system" is likely to produce substantial economies. The an-

swer will depend largely upon the geographic and operational characteristics of and relationships between the properties. As long as the properties are in the same general geographic area and it appears that significant savings will be made by operating them as a "single coordinated system," there is no reason, in terms of the underlying statutory policies involved, why anything more need be shown to justify treating the properties as an integrated system. In other words, the definition of "integrated gas system" in Section 2(a)(29)(B)—like the parallel definition of "integrated electric system" in Section 2(a)(29)(A)—reflects a congressional policy in favor of grouping geographically-related utility properties into a single system for operational purposes.

When it comes to applying the standards of Section 11(b)(1), however, an entirely different policy comes into play. As we have noted, the basic congressional plan in that section was to limit holding companies to a single integrated system, and to permit them to retain additional systems only in those exceptional cases where such retention would meet the exacting requirements of the ABC clauses of the proviso. The fact that Congress approved the grouping of related properties into a single operating system is in no way inconsistent with its determination that a holding company ordinarily should not be permitted to retain more than a single such system.

Thus, when Section 11(b)(1)(A) permits the retention of only those additional systems that cannot be operated independently without the loss of substantial economies, this limitation reflects a congressional pol-

icy not in favor of grouping utility properties but against retention of additional systems other than in exceptional circumstances. In the light of the legislative history (*supra*, pp. 13–16) and the affirmative competitive benefits that result from elimination of joint holding company ownership and control of electric and gas properties (*infra*, pp. 34–38), we submit that "substantial economies" properly may be read as importing a far more stringent standard under Section 11(b)(1)(A) than under Section 2(a)(29)(B).[19]

B. THE COMMISSION'S LONGSTANDING INTERPRETATION IS ENTITLED TO GREAT DEFERENCE

It is a well established canon of statutory construction that "[t]he construction given to a statute by those charged with the duty of executing it is always

[19] Once the court had equated the meaning of substantial economies in Section 11(b)(1) to that in Section 2(a)(29)(B), it was compelled, in order to avoid nullifying the "technical requirements" of Section 2(a)(29)(A), to conclude that the term "substantial economies" in Section 2(a)(29)(B) was stricter than the requirement in Section 2(a)(29)(A) that the electric system "may be economically operated" (R. 1465, n. 11). But there is no reason to believe that Congress intended to provide any different substantive standards of operating savings in the definitions of integrated gas and integrated electric systems. On the contrary, the purpose which these definitions serve—to treat as an integrated system those properties which are so located that they are capable of economical operation in combination—requires the same standard of economies for both gas and electric. In other words, the verbal logic of the court compelled it to suggest different substantive standards where logically Congress would have intended the standards to be the same, in order to support its conclusion that the same standards must be applied in a situation where the congressional intent would appear to call for different standards.

entitled to the most respectful consideration, and ought not to be overruled without cogent reasons." *United States* v. *Moore,* 95 U.S. 760, 763; *Hastings & Dakota R.R. Co. v. Whitney,* 132 U.S. 357, 366. To sustain the Commission's interpretation of such a statute, the Court "need not find that its construction is the only reasonable one, or even that it is the result [it] would have reached had the question arisen in the first instance in judicial proceedings." *Unemployment Comm'n* v. *Aragon,* 329 U.S. 143, 153, quoted in *Udall* v. *Tallman,* 380 U.S. 1, 16.[20] This principle, which the court below disregarded, is fully applicable here.

Conceding that, since the *Philadelphia Co.* decision in 1948 (28 S.E.C. 35), the Commission has articulated no different test from the one it applied here, respondents argue that the Commission initially used a test basically the same as that adopted by the court below and then, in *Engineers Public Service Co.,* 12 S.E.C. 41, shifted briefly to a different, intermediate, test. See Brief for Respondents in Opposition, pp. 6-7, App. B. We disagree. As we now show, the criteria articulated by the Commission in the present case are essentially the same as those it has applied ever since it first dealt with the issue involved here.

In *The North American Co.,* 11 S.E.C. 194, 208-213, the Commission's first decision involving Section 11

[20] See also, *e.g., Power Reactor Co.* v. *Electricians,* 367 U.S. 396, 408; *Billings* v. *Truesdell,* 321 U.S. 542, 552-553; *Gray* v. *Powell,* 314 U.S. 402; *Universal Battery Co.* v. *United States,* 281 U.S. 580, 583; *First Nat'l Bank in St. Louis* v. *Missouri,* 263 U.S. 640, 658; *Surgett* v. *Lapice,* 8 How. 48, 71.

(b)(1)(A), the agency plainly did not interpret the statute the way the court below did. That case did not directly present the issue whether "substantial economies" meant economies whose loss would cause a serious impairment to the additional system. Recognizing the large size and potential independent strength of its "additional" systems, North American contended primarily that substantial economies meant only something more than nominal or *de minimis* economies. The Commission rejected this argument. Quoting with approval the remarks of Senator Wheeler on the conference committee version of Section 11(b)(1)(A) (*supra,* p. 16), the Commission stated: "These remarks reinforce the conclusion that Clause (A) was intended as a significant standard to be applied only where there was a strong reason for an exception to the general policy of permitting retention of only one integrated system" (11 S.E.C. at 209). In response to the company's argument that the subsidiaries relied upon the holding company for financing, the Commission significantly stressed the importance of independent management, single-mindedly devoted to the operation of integrated properties and to the interests of the stockholders therein. 11 S.E.C. at 211. In the same opinion, the Commission held that certain "smaller" integrated electric utility systems were retainable as additional systems under Section 11(b)(1)(A). 11 S.E.C. at 243–244.

In *Engineers,* the next Commission decision dealing with meaning of the provision in issue here, the Commission reemphasized the same themes which ran

through the legislative history of the Act and which were reflected in its *North American* decision. Flatly rejecting the interpretation espoused by respondents here, the Commission ruled as follows (12 S.E.C. at 57–58):

> In prescribing the conditions under which additional systems may be retained, however, Congress did not speak in terms of increased *expenses.* It authorized the retention of additional systems if they could not be operated independently without the loss of substantial *economies.* And in measuring the loss of *economies* accompanying the severance of a combination of two utility systems it is particularly important to consider the beneficial effects of independent ownership upon the efficient operation of each system. A consideration of increased expenditures alone does not adequately reflect the impact of severance upon the two systems. Where, as here, gas and electric operations are conducted in the same territory and in many ways compete with each other, the danger exists that under a single management one business may be suppressed in favor of the other or that one will bear burdens properly allocable to the other. The record before us shows, for instance, that there have been abuses in allocating expenses between gas and electric properties. * * * But that these abuses can most effectively be eliminated by complete severance is unquestionable. Moreover, the possible benefits of unsuppressed development and growth for each business must also be cast in the balance when substantial economies are measured. The economies which

> may be expected from a personnel single-mindedly devoted to the operation of either a gas or electric business, although not predictable in precise mathematical terms, cannot be ignored. [Italics in original.]

And the Commission further stated (12 S.E.C. at 60–61):

> The statutory scheme contemplates that a holding company will be confined to the operation of a single integrated public utility system and in exceptional cases to certain additional integrated utility systems. And Congress required that the circumstances under which so exceptional a combination can be permitted must depend, among other things, upon a showing that substantial economies would be lost in the break-up of such a combination. Since this requirement is an exception to a clearly expressed general policy, it must be strictly construed. Moreover, in determining what are substantial economies, we must bear in mind that Congress was informed that some loss of economies of the sort principally involved in this situation—in joint administrative, clerical and supervisory services and the use of joint facilities—almost inevitably would accompany separation of jointly controlled utility systems. Against this background we must require clear and convincing evidence of a loss of economies which would seriously impair the effective operations of the systems involved in order to permit the retention of an additional system.

While there was, of course, some variation in choice of words, due for the most part to the varying contentions with which the Commission was dealing, the

views of the Commission in *North American* and *Engineers,* as in *Philadelphia Co.,* clearly coincide with those expressed in the present case. See R. 1261-1262.[21] As the Commission summarized its decisions in this area in 1951 (*General Public Utilities Corp.,* 32 S.E.C. 807, 827):

> In connection with the phrase "loss of substantial economies" we have repeatedly held that a showing of such a loss has not been made by merely proving that elimination of the common control of the two systems would result in some increase in expenses. For the economies to be "substantial" they must be "important" in the sense that they are of such nature that their loss would cause a serious economic impairment of the system.[22]

The principle of judicial deference to the administrative construction was applied by the Court of Ap-

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[21] See also *Cities Service Power & Light Co.*, 14 S.E.C. 28, 37, 47-48; *Commonwealth & Southern Corp.*, 26 S.E.C. 464, 487-490; *Middle South Utilities, Inc.*, 35 S.E.C. 1, 11-13. Cf. *Middle West Corp.*, 15 S.E.C. 309, 319-320, 345; *Cities Service Co.*, 15 S.E.C. 962, 981-989; *Peoples Light & Power Co.*, 20 S.E.C. 357, 380-381; *American Gas & Electric Co.*, 21 S.E.C. 575, 596-598; *Pennsylvania Gas & Electric Corp.*, 28 S.E.C. 553, 557-558; *Eastern Utilities Associates*, 31 S.E.C. 329, 347-352.

For cases in which the Commission has permitted retention of small additional systems, see, *e.g.*, *Engineers Public Service Co.*, 12 S.E.C. 41, 90 (1942); *The North American Co.*, 11 S.E.C. 194, 243-244; *Republic Service Corp.*, 23 S.E.C. 436, 451; *Federal Light & Traction Co.*, 15 S.E.C. 675, 683; cf. *The North American Co.*, 32 S.E.C. 169, 178-180.

[22] In both of the cases decided by the Commission since 1951, *Middle South Utilities, Inc.*, 35 S.E.C. 1, and the present case, the Commission adhered to this interpretation. See 35 S.E.C. at 11-13 and R. 1261-1262.

peals for the District of Columbia Circuit in sustaining the Commission's interpretation of Section 11(b)(1)(A) in *Philadelphia Co.* v. *Securities and Exchange Commission,* 177 F. 2d 720. As that court stated (177 F. 2d at 725):

> In the Commission's view, economies are not "substantial" unless their loss "would cause a serious economic impairment of the system" such as to "render it incapable of independent economical operation." * * * "Substantial" is a relative and elastic term. Petitioners concede that economies, to be substantial, must be "important". *We cannot say the Commission's understanding of the term "substantial economies" is wrong.* We construed it similarly in the Engineers case. [Emphasis added.]

In the *Engineers* case (*Engineers Public Service Co.* v. *Securities and Exchange Commission,* 138 F. 2d 936 (C.A.D.C.), certiorari granted, 322 U.S. 723, vacated with directions to dismiss the petition for review as moot, 332 U.S. 788), the same court had upheld the Commission's reading of Section 11(b)(1)(A), expressly rejecting the construction espoused by respondents and the court below. There the court ruled as follows (138 F. 2d at 944):

> "Substantial economies", means something different and, we think, something more than substantial savings in operational expenses. Congress could have said that the divorcement shall not be decreed if the controlling utility or the controlled utility show at a hearing that the cost to operate the latter separately from the former would be substantially greater. If the Act can be construed as meaning just that,

> then the severance ordered here is wrong. "Substantial economies" must mean, as was said in North American Co. v. Securities and Exchange Commission, 2 Cir., 133 F. 2d 148, 152, "important economies." The required *importance* must relate to the healthful continuing business and service of the freed utility. But Congress was not so much concerned with the profit motive of utilities as with the evils that had become prevalent through combinations of utilities. It was first concerned with the wiping out of the evils which the practice of utility combinations had produced, and Congress only consented to dull the blade of its chosen weapon in proved hard cases.

The court also emphasized that, even though there might be a showing of "saving" in a combined operation, it could not be assumed that this "saving would constitute an overall substantial economy," when taking into consideration "so important an event as the freedom of a corporation from the ownership and control of another corporation engaged in a business to some extent intercompetitive * * *" (138 F. 2d at 944). See *infra*, pp. 34–38.

These decisions of the Court of Appeals for the District of Columbia Circuit, coinciding as they do with both the legislative history and the administrative interpretation of the Act, strongly support the Commission's reading of the Act.[23]

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[23] The only case other than the decision of the court below to reach a construction of Clause (A) contrary to that of the Commission is *Louisiana Public Service Commission* v. *Securities and Exchange Commission*, 235 F. 2d 167 (C.A. 5), re-

C. THE COMMISSION'S TEST, BUT NOT THAT OF THE COURT BELOW, PERMITS MEANINGFUL CONSIDERATION OF THE COMPETITIVE ADVANTAGES FLOWING FROM THE OPERATION OF THE "ADDITIONAL" GAS SYSTEM INDEPENDENT OF THE "PRINCIPAL" ELECTRIC SYSTEM

The court below read Section 11(b)(1)(A) in a quantitative rather than a qualitative sense. That is, it held that the test whether economies are "substantial" is whether they are sufficiently large—either in dollar amount or as a percentage of revenue or expenses—that reasonable men would deem them significant. On the other hand, as we have shown, the Commission, the Court of Appeals for the District of Columbia Circuit and the Congress considered that the test of substantiality turned on something more than mere size measured in dollars or percentages; *i.e.*, that losses in economies should not be deemed "substantial" unless they rose to the level that they would seriously interfere with the ability of the additional system to operate soundly and economically independently of the principal system. One important practical consequence of this difference in approach is particularly relevant to the present case and merits brief elaboration.

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versed on jurisdictional grounds, 353 U.S. 368, in which the court expressly refused to consider legislative history (235 F. 2d at 172) and, like the court below, gave no weight to the administrative construction. That case involved an appeal by a State regulatory agency from the Commission's refusal to reopen a Section 11(b)(1) proceeding. Since this Court ultimately held that the court of appeals was without jurisdiction to review the Commission's order involved there, the Fifth Circuit's disagreement with the Commission's interpretation has no legal consequence. See *In re United Corporation*, 184 F. Supp. 502, 511 (D. Del.), affirmed without consideration of this point, 283 F. 2d 593 (C.A. 3).

In the administration of the Holding Company Act, the issue of loss of substantial economies under Clause (A) has arisen principally in determining whether a holding company whose principal system is electric can retain a gas system. One of the evils that had resulted from the widespread control of public utilities by holding companies that had both gas and electric properties in their systems was the favoring of one of these competing forms of energy over the other.[24] Thus in discussing Section 8 of the Act (15 U.S.C. 79h), which prohibits a registered holding company, without the approval of a State regulatory commission, from taking any steps which result in its having an interest in both an electric and a gas utility serving the same territory in a State which prohibits such common control or requires State approval therefor, the Senate Committee explained (S. Rep. No. 621, 74th Cong., 1st Sess., 29) that the section was designed "to prevent the use of the holding company in the future to deny to the public wide-

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[24] See, *e.g.*, the following colloquy in Hearings Before the Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess., 783:

> Senator COUZENS. * * * In other words, if the company found that it was more profitable to develop the electric light business than the gas business, they might block their gas business.
>
> Mr. BENTON. They might.
>
> Senator COUZENS. That is exactly what they do. I know of cases where they do it. * * *

See also Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., 330; Report of National Power Policy Committee, H. Doc. No. 137, 74th Cong., 1st Sess., 10, appended to S. Rep. No. 621, 74th Cong., 1st Sess.

spread and economic use of both natural gas and electric energy merely because it is to the selfish advantage of a given company to foster the use of one of its products as against the other and deprive the public of the benefits of competition between the two * * *."[25] Noting that the original version of Section 8 "contained additional restrictions with regard to * * * the combination of gas and electricity in one system," the committee stated (*id.* at 7):

> This would have necessitated the disposing of certain interests held on the date the title became law, even before the provisions of section 11 became operative. The committee felt that while *the policy upon which this section was based was essential in the formulation of any Federal legislation on utility holding companies,* it did not think that the section should make it unlawful to retain (*up to the time that*

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[25] See *Cities Service Power & Light Co.*, 14 S.E.C. 28, 65–66, for an illustration of neglect by a holding company of some of its gas operations because of its more profitable electric properties.

The Massachusetts Department of Public Utilities, which participated in this proceeding before the Commission in support of NEES, had stated in an earlier case (*Cambridge Gas Light Co.*, P.U.R. 1930 D, 263, 264–265) that it has been "deemed inadvisable that gas companies should engage in the electric business except under exceptional circumstances, and since 1910, it has been the policy of the commonwealth that no electric company should engage in the business of selling gas." More recently, in a proceeding involving the separation of the electric and gas properties of a NEES subsidiary, it repeated that its statute "illustrates the long-standing legislative preference for single-business gas and electric companies * * *." *Lynn Gas and Electric Co.*, 31 P.U.R. 3d 209, 212.

> *section 11 may require divestment*) interests in businesses in which the companies were lawfully engaged on the date of the enactment of the title. [Emphasis added.]

In the present case, the Commission recognized that joint control by NEES of both an electric and a gas system serving the same area could well lead to the favoring of one kind of service to the disadvantage of users of the other. It stated (R. 1274):

> Although the NEES Gas Division handles sales and promotional activities and various other matters for the gas subsidiaries separately from the electric companies, final authority on all important matters rests in the top NEES management. The basic competitive position that exists between gas and electric utility service within the same locality is affected by such vital management decisions as the amount of funds to be raised for or allocated to the expansion or promotion of each type of service. * * *

Of course, the significance of the competitive advantages that either a gas or electric utility and its customers gain when it is freed from the restraints likely to result from joint ownership or control cannot be precisely measured or defined. See *The North American Co.*, 18 S.E.C. 611, 615; cf. *Philadelphia Co.* v. *Securities and Exchange Commission*, 177 F. 2d 720, 724–725 (C.A. D.C.); *Lahti* v. *New England Power Ass'n*, 160 F. 2d 845, 851 (C.A. 1). Such advantages necessarily involve intangible factors—whether, for example, an independent gas system would have made

the same decision not to expand its facilities that was made for it by a holding company management that also controlled an electric system serving the same area, and what the effect upon the gas system of such an expansion would have been.

Thus, it would be wholly unrealistic to discount by a stated percentage or dollar amount a holding company's estimate of the losses in economies that would result from separation of gas and electric systems, in an attempt accurately to reflect the offsetting gains to competition that such separation would produce. Yet that apparently is precisely what the court of appeals would require the Commission to do in the present case. For the court, although recognizing that the Commission "had the right to consider competitive advantages of separation in offsetting alleged losses of economies," criticized the agency for its "failure to find or articulate any specific or approximate financial benefit that such a change would occasion" (R. 1469–1470). The Commission's interpretation of "substantial economies," however, avoids these difficulties and permits the agency to give effect in a meaningful way to the very real, although immeasurable, substantial competitive advantages that result from elimination of common holding company control of gas and electric systems without being required to perform the impossible task of making dollar predictions about an issue that is incapable of such precise definition.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

Public Utility Holding Company Act of 1935, 15 U.S.C. 79a, *et seq.*

NECESSITY FOR CONTROL OF HOLDING COMPANIES

Sec. 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session)

and H.J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

* * * * *

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

* * * * *

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and wide-spread the

holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is declared to be the policy of this chapter, in accordance with which policy all the provisions of this chapter shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this chapter.

DEFINITIONS

SEC. 2. (a) When used in this chapter, unless the context otherwise requires—

* * * * *

(29) "Integrated public-utility system" means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in

one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

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